

IN THE MATTER OF	*	BEFORE THE
GLOBAL CHILDREN, INC.,	*	HOWARD COUNTY
T/A GLOBAL CHILDREN	*	
MONTESSORI SCHOOL	*	BOARD OF APPEALS
Petitioner	*	BA Case No. 10-031C

DECISION AND ORDER

The Howard County Board of Appeals (the "Board") convened on May 18, 2011 to hear the amended Petition of Global Children, Inc., t/a Global Children Montessori School, Petitioner, for a child day care center and nursery school conditional use in an R-20 (Residential: Single) Zoning District. The Petition was filed, pursuant to Section 131.N.13. of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. The Board members indicated that they had viewed the property as required by the Zoning Regulations.

Board members James Walsh, Henry Eagles, Maurice Simpkins, John Lederer and James Howard were present for and participated in the hearing. Board member Walsh presided over the hearing. Barry M. Sanders, Assistant County Solicitor, served as legal advisor to the Board.

This case was conducted in accordance with Section 2.209 of the Board's Rules of Procedure. The Howard County Code, the Howard County Charter, the Howard County Zoning Regulations, the various technical staff reports, the Department of Planning and Zoning Technical Staff Report recommendations dated January 12, 2001 and April 27, 2011, the General Plan for Howard County, the General Plan of Highways, and the amended petition and plat submitted by the Petitioner were incorporated into the record by reference.

The Petitioner was represented by Sang W. Oh, Esquire. No one appeared in opposition to the Petition.

The following persons testified on behalf of the Petitioner: Robert Vogel, Padma Venkatraman, Carey Roesler, Brian Silverman, Carmelita Taylor, Charles Keith and Kappu Ramasubramanian.

The Petitioner proffered, and the Board accepted, the following documents into evidence:

Petitioner's Exhibits

- | | | |
|------------|----|--|
| Exhibit #: | 1. | Fence Exhibit |
| | 2. | Amended Conditional Use Plan with Site Distance Analysis |
| | 3. | Color Version of Fence Exhibit |
| | 4. | Color Version of Amended Conditional Use Plan |

FINDINGS OF FACT

Based upon the evidence presented at the hearing, the Board makes the following Findings of Fact:

1. The subject property is located in the 2nd Election District on the northeast side of MD 103 (Montgomery Road) and the west side of Baugher Farm Road. The Property is referenced as Tax Map 31, Grid 7, Parcel 415, Lot 1 and is also known as 4821 Montgomery Road (the "Property").

2. The 40,510-square foot, irregularly shaped Property is Lot 1 of the five-lot Russell H. Baugher subdivision recorded in April 1959. It is about 110 feet in length along MD 103 and 175 feet along Baugher Farm Road. The Property is improved by a one-story, 1,572 square foot dwelling building circa 1949. The dwelling front is oriented towards and is situated about 53 feet from MD 103.

The Property is currently accessed from MD 103 by a driveway in the southwest property corner. The driveway leads to a paved parking area and a two-car garage on the north side of the dwelling. A retaining wall ranging in height from four feet to six feet separates the lower elevation of the paved area from the lawn. There is a well near the northeast corner of the residence and a metal shed in the rear yard. A metal fence encloses most of the Property and a split rail fence runs along the west side of the driveway.

The topography of the Site is generally level along the west side driveway, and then increases in elevation to the Property's northerly side. The topography also rises significantly from the west to the east along MD 103, and north to south along Baugher Farm Road.

3. To the west is the unimproved R-20 (Residential: Single) zoned Russell H. Baugher Subdivision Lot 5. Further west Lots, 2, 3 and 4 of this subdivision are each improved with a single-family detached dwelling. Across Baugher Farm Road to the east, the 13-acre R-20 zoned Parcel 800 is improved with a residence and various outbuildings situated in the site's south, central area. To the northwest is a farm stand. Parcel 10, Lot 4, an R-20 zoned, 15-acre parcel, which is the site of the Glen Mar United Methodist Church, adjoins the north side of the Property.

4. MD 103 has two travel lanes with a center turning lane within a 60 foot right-of-way in the vicinity of the Property frontage and a posted speed limit of 40 miles per hour.

Baugher Farm Road has one northbound travel lane in the vicinity of the Property frontage. Beginning approximately 400 feet from MD 103, Baugher Farm Road has two travel lanes. Southbound traffic on Baugher Farm Road is prohibited by "Do Not Enter" signs between the farm stand and MD 103. The right-of-way is 30 feet and the posted speed limit is 30 miles per hour.

5. The Property is served by public water and sewer facilities.

6. The Policies Map 2000-2020 of the 2000 General Plan designates the Property as a "Residential Area" land use. The Transportation Map 2000-2020 of the 2000 General Plan depicts MD 103 as a Minor Collector.

7. The Petitioner proposes to operate a Child Day Care Center and Nursery School (the "Day Care Center") on the Property. The Petitioner proposes to construct a 1,762 square foot addition to the south side of the existing residence. The Day Care Center would operate within this structure. The Petitioner anticipates a maximum enrollment of 55 children. The Day Care Center will operate Monday through Friday from 7 a.m. to 6 p.m. Four teachers will staff the center. The addition would be situated about 53 feet from the south property line adjacent to MD 103, 50+ feet from the east property line, 30 feet from the west property line and 80+ feet from the north property line.

The existing parking area, retaining wall and wood deck on the north, rear side of the dwelling will be removed, as will an existing well, portions of a metal fence and a metal shed.

The April 2011 conditional use plan eliminates the MD 103 access and replaces it with a 25-foot wide driveway entrance on Baugher Farm Road sited about 30 feet from the Property's northeast corner. This driveway will access a paved parking area comprising 12 parking spaces including one handicapped space on the north side of the Day Care Center. A new five-foot wide sidewalk and retaining wall would be constructed along the parking spaces on the north side, along the rear façade of the existing dwelling.

The amended conditional use plan depicts a 6-foot screening fence along the Property's west side. A 2,065 square foot outdoor play area is proposed on the south and east sides of the Day Care Center. A proposed 6-foot high privacy fence would enclose the play

area.

A Type A landscape buffer is proposed along the north property lines, a Type B and E buffer along the south and east property lines and a Type C buffer along the west property line.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Board concludes as follows:

I. General Criteria for Special Exceptions (131.B).

A. **Harmony with the General Plan**: Section 131.B.1 of the Zoning Regulations requires that a conditional use plan will be in harmony with the land uses and policies indicated in the Howard County General Plan for the "Residential" land use designation. In evaluating a plan under this standard, the Board must consider (a) the nature and intensity of the use, the size of the Site in relation to the use, and the location of the Site with respect to streets giving access to the Site; and (b) if a conditional use is combined with other conditional uses or permitted uses on a Site, whether the overall intensity and scale of uses on the Site is appropriate given the adequacy of proposed buffers and setbacks.

The Petitioner is proposing a nursery school and day care center, which are relatively low intensity uses. The conditional use site is .93 acres in size. The size of the Site is adequate to support the proposed use and the proposed access will be appropriate for the proposed intensity of use which would occur on Site. The majority of activities will occur indoors. The outdoor play area will be buffered by a privacy fence, distance and landscaping from vicinal residential uses. The Property will have frontage on and direct access to Baugher Farm Road, a Minor Collector. The Board therefore concludes that the nature and intensity of the use, the size of the Site in relation to the use, and the location of the site with respect to

streets giving access to the site, are harmonious with the land uses and policies indicated in the Howard County General Plan for the Residential district in which it is located, in accordance with Section 131.B.1.a.

The proposed conditional use will not be combined with any other permitted use, therefore Section 131.B.1.b. does not apply.

B. **Adverse Effect:** Section 131.B.2 of the Zoning Regulations states in pertinent part that the Hearing Authority shall have the power to permit a conditional use, provided the proposed use at the proposed location will not have adverse effects on vicinal properties above and beyond those ordinarily associated with such uses. In evaluating the Plan under this standard, the Hearing Authority shall consider the following four "adverse effect" criteria: (a) physical conditions; (b) structures and landscaping; (c) parking areas and loading; and (4) access.

When assessing a proposed conditional use under these criteria, we must begin with the realization that virtually every human activity has the potential for adverse impact. Zoning recognizes this fact and, when concerned with conditional uses, accepts some level of such impact in light of the beneficial purposes the zoning body has determined to be inherent in the use. The question in the matter before the board is not whether the proposed use would have adverse effects in an R-20 district. The proper question is whether those inherent adverse effects are greater at the proposed site than they would be generally elsewhere within the R-20 district. *Schultz v. Pritts*, 291 Md. 1, 432 A.2d 1319 (1981); *Mossburg v. Montgomery County*, 107 Md. App. 1, 666 A.2d 1253 (1995). Furthermore, applicants for conditional uses are not required to compare, and concomitantly the Board of Appeals is not to consider, the adverse effects of the proposed use at the proposed location to a reasonable selection or

representative sampling of other sites within the same zone throughout the district or jurisdiction, taking into account the particular characteristics of the areas surrounding those other test sites. *People's Counsel for Baltimore County, et al. v. Loyola College in Maryland*, 406 Md. 54, 956 A.2d 166 (2008).

Once a petitioner presents sufficient evidence establishing its proposed use meets the requirements of the statute, it is incumbent upon those opposed to the petition to show that the use at the proposed location would cause an adverse effect upon adjoining and surrounding properties unique and different, in kind or degree, than that inherently associated with such a use regardless of its location within the zone. *Mossburg v. Montgomery County*, 107 Md. App. 1, 666 A.2d 1253 (1995).

For the reasons stated below, the Petitioner has met its burden in presenting sufficient evidence establishing that this proposed use will not have adverse effects on vicinal properties above and beyond those ordinarily associated with a child day care center and nursery school in the R-20 district.

C. **Physical Conditions**. Whether the impact of adverse effects such as noise, dust, fumes, odors, lighting, vibrations, hazards or other physical conditions will be greater at the subject site than it would generally be elsewhere in the zone or applicable other zones.

The testimony and evidence indicate that the proposed child day care center and nursery school use will not generate inordinate noise, significant outdoor lighting, or other physical effects detectable within the neighborhood. The proposed Conditional Use will be conducted principally indoors. The outdoor play area will be fenced and would not be used continuously. No significant outdoor lighting is proposed. The use proposed on this site will not generate excessive noise, traffic, odors, or other adverse effects upon vicinal

properties beyond those inherently associated with a child day care center and nursery school located in an R-20 zone, in accordance with Section 131.B.2. of the regulations.

D. Structures. The location, nature and height of structures, walls and fences, and the nature and extent of the landscaping on the site are such that the use will not hinder or discourage the development and use of adjacent land and structures more at the subject site than it would generally in the zone or applicable other zones.

Based on the evidence, the Board concludes that the Petitioner has met its burden of demonstrating that the proposed use complies with Section 131.B.2.b. The Petitioner proposes to construct a 1,762 square foot addition to the south side of the existing residence. The day care center would operate within this structure. The outdoor play area will not be visible from the road with the privacy fence and will be buffered from adjacent residential properties by the fence, distance and landscaping.

E. Parking and Drives. Parking areas will be of adequate size for the particular use. Parking areas, loading areas, driveways and refuse areas will be properly located and screened from public roads and residential uses to minimize adverse impacts on adjacent properties.

Based on the evidence, the Board concludes that the Petitioners have met their burden of demonstrating that the proposed use complies with Section 131.B.2.c. The proposed child day care center and nursery school building will comprise approximately 3,334 square feet. Based on a requirement of three parking spaces per 1,000 square feet, 10 parking spaces are required and 12 spaces are provided. The proposed parking spaces will adequately serve the proposed use and will be properly screened from roads and adjacent residential properties to minimize impact on adjacent properties.

F. **Safe Access.** The ingress and egress drives will provide safe access with adequate sight distance, based upon actual conditions, and with adequate acceleration and deceleration lanes where appropriate.

Based on the evidence, the Board concludes that the Petitioners have met their burden of demonstrating that the proposed use complies with Section 131.B.2.d. The proposed access point will be relocated from MD 103 to Baugher Farm Road which will provide access to the conditional use site.

II. Specific Criteria for Child Day Care Centers and Nursery Schools, Day Treatment and Care Facilities (Section 131.N.13).

a. The proposed parking lot will provide safe vehicular and pedestrian circulation patterns.

b. This section is not applicable as the Property is not located in an industrial or commercial district.

c. The 40,510 square foot lot size exceeds the minimum requirement of 500 gross square feet per child for a maximum total of 55 children ($55 \times 500 = 27,500$ square feet) for the day care center.

d. The outdoor play area will be fenced, located to the side of the principal structure and buffered from adjoining residential properties by landscaping.

e. The proposed parking areas are located and landscaped to minimize their visibility from roads and adjacent residential properties.

f. The size of the proposed Child Day Care Center and Nursery School would be generally residential in scale and would be proportionate to the size of the Site. The proposed building would be generally compatible in scale and character with vicinal properties.

g. The Property will have frontage on and direct access to Baugher Farm Road, a

Minor Collector.

h. The 50' setback along the northern property line (adjoining Glen Mar United Methodist Church) is reduced to 20' in accordance with Section 131.N.13.g(2)(a).

i. The 50' setback along the western property line (adjoining vacant lot) is reduced to 20' in accordance with Section 131.N.13.g(2)(b). A 6' high privacy fence and landscaping buffer is provided.

j. The Petition complies with the requirement that at least 20 percent of the area within the building envelope will be green space.

ORDER

Based upon the foregoing, it is this 14th day of July, 2011, by the Howard County Board of Appeals, ORDERED:

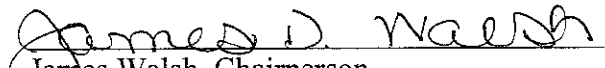
That the amended Petition of Global Children, Inc., t/a Global Children Montessori School, for a child day care center and nursery school conditional use in an R-20 (Residential-Single) Zoning District is hereby **GRANTED**, subject to the following conditions:

1. The Conditional Use shall apply only to the proposed uses as described in the amended petition and plan dated April 2011, and as depicted on the Conditional Use Plan for the Property submitted to the Board on May 18, 2011, as Petitioners' Exhibit #2 and not to any other activities, uses, or structures on the Property.
2. The Petitioners shall comply with all applicable Federal, State, and County laws and regulations.

ATTEST:

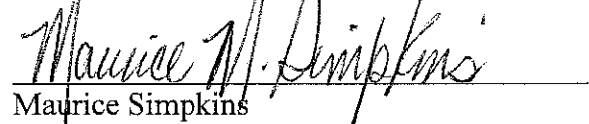
HOWARD COUNTY BOARD OF APPEALS

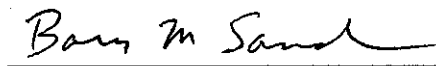

Robin Regner, Secretary

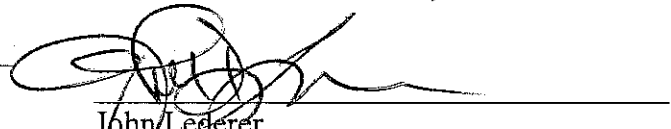

James Walsh, Chairperson


PREPARED BY:
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